

paper of Hancock and Mann, held by the trustees of Jones, are entitled to dividends of the fund. And when upon the paper of Jones the names of Dawson and Norwood do not appear the same right exists and founded upon the same principle of substitution, when their names do appear upon the paper of Hancock and Mann for which the paper of Jones was given in exchange.

The Auditor states in his last report that he has admitted into the account, filed therewith, all of the claims filed where the exchange and counter notes appear to have been dated after the 11th of April, 1846, and where the names of Hancock and Mann appear on either the exchange or counter notes.

This course on the part of the Auditor is supposed to be in conflict with the former judgment of the court which, according to the argument filed by the solicitor of one of the parties, determines that the right to participate in the fund depends not upon the date of the notes of Hancock and Mann, but of those of Jones given in exchange. Such, however, is not the view taken in either of the former opinions in this case. Upon this point it was said in the opinion of the 10th of January last, "that the notes of Hancock and Mann, held by Winn and Ross, trustees of Samuel Jones, Jr., which bear date prior to the mortgage of the 11th of April, 1846, are not entitled to the benefit of that security, and must be excluded from participating in the fund," &c. And as the holders of the paper of Jones given in exchange for that of Hancock and Mann are let in upon the principle of substitution, it would necessarily follow that the parties holding it are placed precisely in the condition they would have occupied if they held the obligations of Hancock and Mann, and that if the latter would have been excluded because dated prior to the mortgage, so must the former. This seems to result from the principle of substitution which places the substitute in all respects in the place of the party substituted. I am of opinion, therefore, that the Auditor was right in excluding the notes in question from dividends of the fund.

By the order of the 10th of January last, the cause was re-